

405 KAR 7:060. Experimental practices mining.

RELATES TO: KRS 350.020, 350.028, 350.465

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations that are no more stringent than SMCRA. This administrative regulation governs the granting and approval of experimental mining practices that encourage advances in mining, reclamation, and postmining land use practices.

Section 1. General. Experimental practices provide a variance from the environmental protection performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20 for experimental or research purposes to encourage advances in mining and reclamation practices or to allow certain alternative postmining land uses. Experimental practices may be undertaken if they are approved by the cabinet and the Director of OSM and if their terms and conditions are incorporated into a permit, a permit amendment, or a permit revision issued in accordance with 405 KAR 8:010.

Section 2. Approval Procedures. (1) Required approval. No person shall engage in or maintain any experimental practice unless that practice is first approved in a permit by the cabinet and the Director of OSM.

(2) Application requirements. Each permit application submitted pursuant to this administrative regulation shall contain appropriate descriptions, data, maps, and plans which identify:

(a) The nature of the experimental practice, including a description of the performance standards for which variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted.

(b) How use of the experimental practice:

1. Encourages advances in mining and reclamation technology; or
2. Allows a postmining land use for industrial, commercial, residential, or public (including recreational facilities) use on an experimental basis, when the results are not otherwise attainable under the administrative regulations of 405 KAR Chapters 7 through 24.

(c) That the experimental practice:

1. Is potentially more, or at least as, environmentally protective during and after the proposed mining and reclamation operations as would otherwise be required by standards promulgated under 405 KAR Chapters 16 through 20; and

2. Will not reduce the protection afforded public health and safety below that provided by the requirements of 405 KAR Chapters 16 through 20.

(d) That the applicant will conduct monitoring of the effects of the experimental practice. The monitoring program shall ensure the collection, analysis, and reporting of sufficient, reliable data to enable the cabinet and the Director of OSM to:

1. Evaluate the effectiveness of the experimental practice; and
2. Identify, as soon as possible, potential risks to the environment and public health and safety which may be caused by the experimental practice during and after mining.

(e) To the extent possible as can be foreseen prior to the actual conductance of the experimental practice, the procedures and measures which will be implemented to comply with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, or, if such compliance is not possible, to provide a level of protection equivalent to or in excess of that provided for by the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, if the experimental practice should fail to be as environmentally protective or as protective of the health or safety of the public as provided for by the performance standards of KRS Chapter 350 and 405 KAR Chapters 16

through 20.

(3) Public notice. All experimental practices for which variances are sought shall be specifically identified through the newspaper advertisements by the applicant and the written notifications by the cabinet required under 405 KAR 8:010, Section 8.

(4) Criteria for approval. No permit authorizing an experimental practice shall be issued unless the cabinet finds, in writing upon the basis of both a complete application filed in accordance with the requirements of this administrative regulation and 405 KAR Chapter 8, and the concurrence of the Director of OSM, that:

(a) The experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public (including recreational facilities) use on an experimental basis;

(b) The experimental practice is potentially more, or at least as, environmentally protective during and after mining operations as would otherwise be required under 405 KAR Chapters 16 through 20;

(c) The mining operations approved for a particular land use or other purpose are not larger or more numerous than necessary to determine the effectiveness and feasibility of the experimental practice; and

(d) The experimental practice does not reduce the protection afforded public health and safety below that provided by standards promulgated under 405 KAR Chapters 16 through 20.

(5) Revisions. Revisions to an experimental practice shall be processed and approved in accordance with 405 KAR 8:010, Section 20. Any revisions which propose significant alterations in the experimental practice shall be deemed major revisions and subject to the approval of the Director of OSM. Revisions that do not propose significant alterations in the experimental practice shall be deemed minor revisions and shall not require the approval of the Director of OSM.

(6) Prime farmland. Experimental practices granting variances from the special environmental performance standards applicable to prime farmland shall be approved only after consultation with SCS.

(7) Alternative postmining land uses. Experimental practices granting variances from the requirements of KRS Chapter 350 and 405 KAR for alternative postmining land uses shall not be approved by the cabinet, unless the attainment of the alternative postmining land uses would not otherwise be practicable or feasible without the approval of the experimental practice.

Section 3. Monitoring and Additional Requirements. (1) Each permittee undertaking an experimental practice shall conduct the periodic monitoring, recording, and reporting programs set forth and approved in the application. Each permittee shall satisfy such additional requirements as the cabinet or the Director of OSM may impose to ensure protection of the environment and the public health and safety.

(2) In accordance with 405 KAR 8:010, Section 18, the terms and conditions applicable to the experimental practice shall be as indicated in the approved permit application.

(3) If, subsequent to the issuance of a permit for an experimental practice, the experimental practice should fail to be as environmentally protective or as protective of the health or safety of the public as provided for by the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, the permittee shall immediately contact the cabinet and the OSM, shall fully and accurately describe the situation to those agencies, and shall implement those procedures and measures identified pursuant to Section 2(2)(e) of this administrative regulation which are necessary to achieve such a condition. If the procedures and measures identified pursuant to Section 2(2)(e) of this administrative regulation are determined by the cabinet or the OSM to be insufficient to achieve this condition, the permittee shall perform remedial measures as required by the cabinet or the OSM to achieve such a condition. If the cabinet or the OSM determines that such a level of protection cannot be achieved, the cabinet or the OSM shall inform the permittee of remedial measures which must be

implemented to provide maximum protection to the environment and the health and safety of the public.

Section 4. Periodic Review. (1) Each experimental practice shall be reviewed by the cabinet at a frequency set forth in the approved permit but no less than two and one-half (2 1/2) years. After review the cabinet shall, after consulting with the Director of OSM, require, by order supported by written findings, any reasonable modification of the experimental practice necessary to ensure that the operations involved are conducted to fully protect the environment and public health and safety.

(2) Administrative review of modification order. Any person who is or may be adversely affected by an order pursuant to subsection (1) of this section shall be provided with an opportunity for a hearing as established in 400 KAR 1:110, Section 8. (8 Ky.R. 1471; eff. 1-6-1983; 12 Ky.R. 897; eff. 2-4-1986; TAm eff. 5-4-2018; Crt eff. 7-3-2018.)